

DECISION



19515 *Whisker*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200770

DATE: September 23, 1981

MATTER OF: Capitol Ambulance Service, Inc.

DIGEST:

1. Bid may not be rejected as nonresponsive because it was not accompanied by evidence of bidder's having unspecified local license as required by solicitation.
2. Contracting officer may consider lack of unspecified local license as bearing on bidder's responsibility only in circumstances where he has reasonable basis for believing local license is required for performance, that reasonable possibility of enforcement exists and enforcement attempts could interrupt and delay contract performance if contract were awarded to an unlicensed contractor.
3. An agency must make separate awards for each line item to qualified, responsive bidders where to do so is less costly than an aggregate award to one bidder unless solicitation contains specific language requiring aggregate award and it is shown that an aggregate award would result in a lower overall cost to the Government or is otherwise required to meet the agency's minimum needs.

Capitol Ambulance Service, Inc. protests the Veterans Administration's (VA) award of a contract to another bidder under invitation for bids (IFB) No. 544-6-81. The contract is for emergency (line item 1) and non-emergency (line item 2) ambulance services to the Veterans Hospital, Columbia, South Carolina.

We sustain the protest.

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Capitol's bid was low for one item (non-emergency trips); however, the contracting officer rejected Capitol's bid as nonresponsive because Capitol did not submit evidence of a local license with its bid. In this connection, the IFB stated that:

"Successful bidder shall meet all requirements of Federal, State or City codes regarding operations of this type of service" and,

"Evidence of local licenses/permits shall be submitted with [the] bid * * *."

Capitol, a small business firm, contends that its bid was improperly rejected as nonresponsive because the license requirement is a matter of responsibility and that since it is a small business firm the question of its responsibility must be referred to the Small Business Administration (SBA) for final determination under SBA's certificate of competency (COC) program.

Normally, a general solicitation provision requiring the successful bidder to obtain all necessary state and local licenses does not impose a requirement with which a Federal contracting officer need be concerned prior to making award. Rather, it imposes upon the successful bidder the obligation to resolve with state and local authorities the question of what licenses are required and to obtain them. A contracting officer may consider the lack of a state or local license (in circumstances where the solicitation does not specify which licenses are mandatory) as rendering a bidder nonresponsive in situations where the contracting officer reasonably determines that enforcement attempts by the state are a reasonable possibility and such enforcement attempts could interrupt and delay performance if the contract were awarded to an unlicensed contractor. Career Consultants Inc., B-195913, March 25, 1980, 80-1 CPD 215. In general, however, the lack of a license which the state or local authorities may deem necessary would not be a bar to a contract award. It is only where the solicitation expressly requires that a bidder hold a specific local license that compliance with the licensing requirement will always be a matter of bidder responsibility. See, e.g., Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132; B & W Stat Laboratory, Inc., B-195391, March 10, 1980, 80-1 CPD 184; 53 Comp. Gen. 51 (1973). A licensing requirement, however, is not a matter of bid responsiveness. 53 Comp. Gen. 51, supra.

The licensing requirements set forth in the solicitation are not clear, even when read together. No specific state or local license is required, although evidence of having a local license is required. At best, these provisions, and the contracting officer's actions, suggest that this case may fall within the rule of Career Consultants, Inc., 'supra, i.e., the lack of a license could have a bearing on Capitol's responsibility because the contracting officer had some reason to believe that a local license was required and that enforcement of the local licensing requirement was likely and such enforcement could interrupt or delay performance. In such circumstances, rejection of the bid as nonresponsive was improper; rather, the bidder should have been given a reasonable opportunity after bid opening to furnish evidence of the required license and, if such evidence was not furnished, the matter should have been referred to the SBA under that agency's COC procedures, since the SBA has conclusive authority to determine all matters of a small business bidder's responsibility if the bidder is found nonresponsive. International Business Investments, Inc.; Career Consultants, Inc., B-198894, February 23, 1981, 81-1 CPD 125.

After the protest was filed, the agency decided that regardless of how the license issue might be resolved, Capitol would still be ineligible for award of item 2 because the IFB did not authorize separate or multiple awards for each line item. Thus, the agency reasoned, award should be made for all items to the one bidder which offered the lowest aggregate price, in this case the Richmond County Ambulance Service Commission. We do not agree with the agency that it was precluded from making multiple awards under the terms of the solicitation.

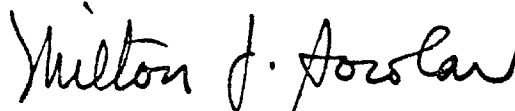
The IFB contained Standard Form 33-A of which paragraph 10(c) expressly permits the Government to "accept any item or group of items of any offer unless the offeror qualifies his offer by specific limitations." There was no other language in the IFB limiting the effect of paragraph 10(c). If an award is to be made on an aggregate basis only, Federal Procurement Regulations § 1-2.201(b)(g) (1964 ed.) requires that a statement to that effect be included in the IFB. The IFB did not contain any such language.

We also note that an aggregate award, even if provided for in the solicitation, may be viewed as contrary to the statutory requirement to maximize competition unless there

is adequate justification to show that a single, aggregate award would result in a lower overall cost to the Government or is otherwise required to meet the agency's minimum needs. Com-Tran of Michigan, Inc., B-200845, November 28, 1980, 80-2 CPD 407. Administrative convenience alone is not an adequate justification. Com-Tran, supra. That is because the statute requires that IFB's shall permit such full and free competition as is consistent with the procurement of types of property and services necessary to meet the requirements of the agency concerned, and further mandates that award shall be made to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to the Government. 41 U.S.C. 253 (1976).

Since the contract term expires September 30, 1981, we believe no corrective action is possible at this time. Nevertheless, we are recommending to the Administrator of Veterans Affairs that appropriate action be taken to prevent similar deficiencies in future procurements.

The protest is sustained.



Acting Comptroller General
of the United States